

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STEVE MONTANO,

Plaintiff/Counter-defendant,

v.

No. 13-cv-1149 KBM/SMV

GEORGE GARY DUNCAN,

Defendant/Counterclaimant.

ORDER QUASHING ORDER TO SHOW CAUSE

THIS MATTER is before the Court on its Order to Show Cause [Doc. 36] (“OSC”), issued on June 26, 2014, and on Defendant[’]s Response to Order to Show Cause [Doc. 40], filed on June 26, 2014. For the reasons stated herein, the OSC will be quashed, and no sanctions will be imposed at this time.

On April 29, 2014, the Court entered an Initial Scheduling Order [Doc. 29] (“ISO”) ordering the parties to make their initial disclosures by June 11, 2014, and setting a telephonic Rule 16 scheduling conference for June 25, 2014, at 1:30 p.m. Although Plaintiff’s counsel appeared for the status conference, Defendant did not appear. [Doc. 34]. At the conference, Plaintiff’s counsel informed the Court that Defendant had not completed his initial disclosures. Nothing on the Court’s docket indicated that Defendant had completed his initial disclosures as required.

Accordingly, the Court ordered Defendant to show cause why he should not be sanctioned for failing to provide initial disclosures in accordance with the Court’s ISO, and for failing to appear at the Rule 16 scheduling conference. [Doc. 29]. Defendant responded the

following day. [Doc. 40]. Defendant explained that he had been preoccupied with other litigation in Texas and “simply forgot” about the Rule 16 scheduling conference. *Id.* Defendant admitted that he had “no excuse” for failing to serve his initial disclosures on time. *Id.* Defendant apologized to the Court and to opposing counsel, pledged never to repeat his failures, and offered to accept any reasonable sanction. *Id.*

Despite Defendant’s failure to appear at the Rule 16 scheduling conference, scheduling deadlines were set and a scheduling order was issued. Furthermore, although Defendant did not serve his initial disclosures by June 11, 2014, as ordered, he did serve them on June 26, 2014, one day after the Order to Show Cause was issued. Accordingly, the Court finds that no sanctions are warranted at this time. However, **Defendant is strongly admonished that he must meet all future deadlines, attend all hearings, and follow all applicable rules and all Court orders. Otherwise, sanctions will be imposed, up to and including default judgment on Plaintiff’s claims and dismissal of Defendant’s counterclaim.**

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Order to Show Cause [Doc. 36] is **QUASHED**.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge